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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
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12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 HSUAN BIN CHEN, et al.,
16 Defendant.
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Case No. CR-09-00110-SI

**DEFENDANT HSUAN BIN CHEN'S
[PROPOSED] INSTRUCTION ON
TESTIMONY OF KEITH LEFFLER**

Date: February 8, 2012
Time: 2:00 PM
Judge: Hon. Susan Illston
Place: Courtroom 10, 19th Floor

1 Below is the proposed instruction that defendant Hsuan Bin Chen handed to the Court and
2 provided to the government on February 8, 2012. The government filed an opposition to Mr.
3 Chen's proposed instruction on February 9, 2012 (ECF No. 763). The Court considered Mr.
4 Chen's instruction, and the government's response, and gave a modified instruction on February
5 9, 2012. To complete the electronic record, Mr. Chen hereby files this proposed instruction:

6 Defendant Hsuan Bin Chen, on behalf of himself and all other individual defendants,
7 requests that the Court instruct the jury as follows regarding the testimony of Dr. Keith Leffler:

8 You are about to hear the testimony of government witness Dr. Keith Leffler,
9 whom the government has proffered as an economic expert on the issue of
10 whether the alleged conspiracy resulted in any overcharges to LCD customers.
11 Dr. Leffler's testimony is inadmissible to prove that any of the individual
defendants participated in the alleged conspiracy, and you cannot consider Dr.
Leffler's testimony when you are deciding the guilt of any individual defendant.

12 The proposed instruction is appropriate for two reasons. First, as stated at page 2,
13 paragraph 4 of Leffler's report of September 13, 2011, his assignment in this case was "to
14 evaluate the overcharges on Liquid Crystal Displays." That issue is not relevant to the guilt or
15 innocence of Mr. Chen or any individual defendant.

16 Second, and of great importance, Leffler's entire analysis assumes the existence of the
17 charged conspiracy and relies on the guilty pleas of individuals and companies in order to do so.
18 *See* Leffler Report at p. 13, ¶ 24. Indeed, Leffler's report refers throughout to the crystal
19 meetings as "conspiracy meetings." *See, e.g., id.* at p. 14, ¶ 25. If the individuals were tried
20 alone, the government could not call an expert to opine either that the charged conspiracy existed,
21 or to offer any opinion which necessarily rested on that assumption. The proposed limited
22 instruction is in order.

23 Dated: February 10, 2012

COOLEY LLP

26 /s/ Jennifer M. French

JENNIFER M. FRENCH

Attorneys for Defendant HSUAN BIN CHEN